

ISSUED FEBRUARY 11, 1998

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA

KOYNE L. MILES	)	AB-6671
dba Food Plaza)	
601 S. Prairie Avenue	)	File: 20-205574
Inglewood, CA 90301,	)	Reg: 950-33299
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing
	)	October 1, 1997
	)	Los Angeles, CA
)	
)	

Koyne L. Miles, doing business as Food Plaza (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale beer and wine license for ten days for his employee having sold alcoholic beverages to a minor, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and

¹ The decision of the Department, dated May 2, 1996, is set forth in the appendix.

Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Koyne L. Miles; and the Department of Alcoholic Beverage Control, appearing through its counsel David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 11, 1987. Thereafter, the Department instituted an accusation on July 13, 1995, alleging that on May 19, 1995, appellant's clerk sold beer to a minor.

An administrative hearing was held on March 4 and March 25, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the sale of a 22-ounce bottle of beer to a minor police decoy, who at the time was approximately 19 and one-half years of age.

Subsequent to the hearing, the Department issued its decision which determined that the clerk had requested evidence of the minor's age, and had been presented with a valid California driver's license which showed the minor's true date of birth and bore across the front the legend "AGE 21 IN 1996." Nevertheless, the clerk sold the minor the beer. Appellant's license was ordered suspended for ten days. He thereafter filed a timely notice of appeal.

In his notice of appeal, appellant raises the following issues: (1) the Department filed an accusation without an investigation of the evidence or facts, in that no ABC 333 report was available; (2) Inglewood police officers testified in contradiction of each

other; (3) the Inglewood Police Department did not use the decoy program guidelines; (4) the Administrative Law Judge (ALJ) did not allow subpoenas for all defense witnesses; and (5) the decision did not reflect appellant's prior history. Appellant did not file a brief until shortly before the Appeals Board hearing. The Department had previously filed a brief addressing the points in appellant's notice of appeal. While we do not approve of appellant's tardiness, we have considered the arguments raised in his untimely filed brief.

DISCUSSION

I

Appellant complains that the Department did not prepare an investigative report regarding the incident. However, the Department points out that the decoy operation was run by the Inglewood Police Department, whose officers fully documented the incident. There was no need for a report. Indeed, appellant has not disputed the evidence of the sale to the minor.

Appellant argues that if the Department had prepared a report, he would have been able to learn the identity of additional witnesses. He has not indicated the issues for which such witnesses might have been able to provide relevant testimony, and, as noted, the sale to the minor was not disputed.

II

Appellant contends the Inglewood police gave contradictory testimony, but cites

no examples. The Department cites the general rule that all conflicts in the evidence are resolved in favor of the Department's decision.

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (substantial evidence supported both the Department's and the license-applicant's position); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; Gore v. Harris (1964) 229 Cal.App.2d 821 [40 Cal.Rptr. 666].)

A review of the record indicates no material conflict in the evidence. There were different recollections as to how many police officers were at the scene, but there was no indication that this minor disparity affected the quality of the evidence.

Appellant complains that had he been permitted to call Inglewood police officer Lopez as a witness on his own behalf, he would have been able to show Lopez was not

a competent witness. The ALJ, noting that appellant had already cross-examined Lopez for over an hour, and after requiring an offer of proof, ruled that the matters appellant proposed to cover were irrelevant, and refused to permit him to recall the officer. According to his offer of proof, appellant wished to develop the overall role of officer Lopez in the minor decoy program being conducted by the city of Inglewood. We agree with the ALJ that this proposed line of inquiry went well beyond the issues.

Appellant also argues that Lopez' testimony was crucial in light of the testimony of a second Inglewood police officer as to the number of officers who were at the scene when appellant's clerk made the sale. However, appellant cross-examined Lopez on this very point [II RT 22-23, 33-34]. While free to argue that the testimony of the two officers was contradictory, appellant had no right to recall Lopez simply to make the same point a second time.

III

Appellant contends the Inglewood police did not comply with the Department's decoy program guidelines. The Department notes that the guidelines in effect at the time of the incident were informal, not yet adopted as a formal rule. Moreover, the evidence is clear that the clerk was shown identification showing the minor's true age.

IV

The issuance and enforcement of subpoenas was the subject of a hearing on March 4, 1996. At that time the Administrative Law Judge ordered certain subpoenas enforced, and rejected others. Appellant has not identified any evidence which he was

prevented from offering. The ALJ acknowledged appellant's previously unblemished record, and his compliance efforts, which seem to have been at the root of several of the subpoenas he sought.²

V

Appellant's contention that the decision did not reflect his prior history seems to be an attack on the penalty. As noted, the ALJ took appellant's prior history into account. The sale to the minor was clearly proven; a suspension of ten days is not excessive.

CONCLUSION

The decision of the Department is affirmed.³

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² Appellant stressed at the hearing before this Board that he was pursuing this and an appeal in a second matter in order to defend his integrity. The violation in this case was committed by an employee of appellant, not by appellant personally. However, as the licensee, he remains vicariously responsible for his employee's conduct.

³ This final decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this decision as provided by §23090.7 of said Code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.